



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-02-2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

TAX CASE (APPEAL) No.28 OF 2007

Commissioner of Income Tax,
Chennai IV.

....

Appellant

-vs-

P.Chinniah

....

Respondent

Appeal against the order, dated 28.07.2006, made in ITA No.1068/Mds/2001 on the file of Income Tax Appellate Tribunal, Madras 'B' Bench for the Assessment Year 1996-97 against It Appeal No.79-99-2000/VI dated 18.5.2001 on the file of the Commissioner of Income Tax (Appeals VI) Chennai against GIR No.1014C dated 30.3.99 on the file of the Income-Tax Officer, City Ward (I) (I) Chennai.

For appellant : Mr.J.Narayanaswamy,
Senior Standing Counsel.
for M/s.Pushya Sitaraman

J U D G M E N T

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This appeal is at the instance of the Revenue, raising the following questions of law :

1.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the existing residential property belonged to the HUF purely on the premise that the business from where the funds were obtained to buy that property was started using HUF funds ?

2.Whether in the facts and circumstances of the case, the Tribunal was right in holding that



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the property at Ramavaram was purchased out of the agricultural income of the HUF, when the assessing officer has given a clear finding that the HUF did not have enough income to make such an investment ?

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the property purchased by the assessee was only a residential property and not a commercial property?

2. The assessee derived capital gains from his relinquishing of tenancy rights and invested the same in a house, claiming exemption under Section 54F of the Income Tax Act. The assessing authority rejected the plea on the ground that the assessee had owned a residential house, prior to the investment, quite apart from the fact that the property purchased was a commercial one and, as such, the assessee was not eligible for the benefit of exemption under Section 54F.

3. On appeal, the first appellate authority allowed the same, accepting the contention that the house at Ramavaram belonged to the assessee in his HUF capacity purchased out of his agricultural income. Apart from this, perusing the sale deed, dated 15.09.1983, and also considering the fact that municipal tax receipts were paid as residential property, the Commissioner of Income Tax (Appeals) accepted the case of the assessee.

4. On appeal at the instance of the Revenue, the Tribunal held that the property at Ramavaram was a Hindu Undivided Family property and not individual property. The Tribunal further held that the assessing authority had blindly drawn an inference that it was an individual property. As to the character of the property purchased, the Tribunal held that the CIT (Appeals) had noted that the property in question was a residential property as per the municipal assessment records and, further, the assessee had taken loan of Rs.40.00 lakhs from Park Town Benefit Fund Ltd., by mortgaging the said property, for renovation of the property and the assessee used the property for residential purpose only. Under the circumstances, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals).

5. Learned Standing Counsel appearing for the Revenue, however, could not controvert the said finding, by placing any material to say that the Tribunal had no material to come to the above said conclusion.

6. In the absence of any illegality shown in the findings



of the Tribunal, we do not find any ground for admitting this appeal.

7. Since there are no substantial questions of law, this appeal is dismissed, in limine.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. THE ASSISTANT REGISTRAR,
INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, RAJAJI BHAVAN,
BEASANT NAGAR, CHENNAI 90.

2. THE COMMISSIONER OF
INCOME TAX, CHENNAI IV, Chennai.

3. THE COMMISSIONER OF
INCOME TAX (APPEALS VI)
CHENNAI.

4. THE INCOME -TAX OFFICER,
CITY WARD (II) (I),
CHENNAI.

+1cc to M/s. Pushya Sitaraman, Sr. St.Counsel Sr 6953

KLT (CO)
km/16.3.

T.C.(A) No.28 OF 2007